FARAD CONTINUATION SHEET NO
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
FIRST APPEAL NO.288 OF 2004 WITH C.A. NO.961/2004

Office notes, office Memoranda of Coram, appearance, Court's orders or directions and Registrar's orders.	**Court's or Judge's orders**

Mr. R.S. Apte, for the Appellant.
Mr. D.N. Hungad for the Respondent.

CORAM : R.S. MOHITE, J.
DATED : 10/8/2005.

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P.C.

1. Heard both sides.

2. Admit. By consent, appeal is taken up for hearing immediately.

3. This appeal challenges an order which has been passed by Judge of the Civil Civil Court Mr. V.C. Singh in which a merely noting was recorded that there was no reply, decree has been passed as prayed. Interest has been awarded at 18% per annum and 2/3rd refund has been directed. The exact order from the roznama reads as follows:

"Mr. Vakhari Advocate for the plaintiff. No reply. No order on summons for Judgement No.605 of 2002, 606 of 2002, 607 of 2002, Decree as prayed. Interest 18% per annum. 2/3rd refund".

The Advocate for the appellant relied upon the Judgment of the Apex Court in the case of Balraj Taneja and another Vs. Sunil Madan and another reported in 1999 (8) SCC Page 396. In the said Judgment the Apex Court has held that despite non filing of written statement by defendant where factual controversy still alive- Where pleadings in the plaint, even if treated as admitted, would keep the controversy alive, such facts would have to be proved by the plaintiff even though no written statement had been filed and till such proof were furnished court could not legally proceed to pass a judgment under Order 8 Rule 10.

3. Record and proceeding was called in

the present case. It is seen from the record and proceeding that there was no Judgment. It appears that the Trial Court has not applied its mind. In the circumstances, the order dated 16.10.2002 will have to be set aside. Accordingly, the same is set aside. Summary Suit is remanded to the Trial Court for fresh decision according to the law. Since the summary suit is of 2002, same should be decided expeditiously in any case on or before December, 2005. Appeal stands disposed of accordingly. Record and proceeding be sent back immediately. Matter to be placed on board of the court taking of summary suit on 29.8.2005. Both the parties waive notice of the next date.

4. In view of the above order, civil application is disposed of.

(R.S. MOHITE, J.)